IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1395 OF 2005

Vijendra Dhuri Singh ..Appellant

versus

1. Chetak Co-operative Housing Society Ltd.
2. B.S.E.S. Ltd.
3. Mahanagar Telephone Nigam Ltd. ..Respondents

Mr. D. Dwivedi for the Appellant.
Mr. R. K. Bhasin for the Respondent No.1.
None for the Respondent Nos. 2 and 3.

CORAM : D. G. DESHPANDE,J.

DATE : 28TH SEPTEMBER,2005

ORAL ORDER :

1. Heard Counsel for the Appellant and the Respondent No.1.

2. Appellant is the original Plaintiff and Respondents are the original Defendants. Appellant filed a suit for mandatory injunction against Respondent Nos. 2 and 3 to direct them to fix electric meter and install telephone connection in

the suit premises i.e. garages bearing garage Nos. 2 and 3 in the vicinity of and premises of Manju Maha, Chetak Co-op. Housing Society, 35, Pali Hill, Bandra (West), Mumbai, and also permanent injunction against respondent No.1 from causing obstruction in discharging legal duties of the respondent No.2 i.e. BSES Ltd. and Respondent No.3 regarding installation of electric connection or telephone at the suit site. (It has to be noted that Mr. Dwivedi contended that the plaintiff has given up claim regarding installation of telephone line). It was the case of the plaintiff that he was in occupation and possession of the garages Nos. 2 and 3 pursuant to Agreement dated 27.2.1993 executed between one Bhiku and himself on monthly compensation of Rs.200/- from 1.3.1993. The plaintiff wanted to have electric connection. He applied to the defendant No. 2. Defendant No. 2 were ready to give connection for electricity but the defendant No.1 society opposed and obstructed, even the police help was taken but of no use. Therefore, he was constrained to file the suit for the aforesaid reliefs. According to the plaintiff he has a right to get electric supply because he was in occupation of the premises and by virtue of the amendment to the Electricity Act, 2003, he has become so entitled to under Section 43 of the Act which enjoins upon licence distributor to supply

electricity to the owner or the occupier of any premises within one month of the application requiring such supply.

3. This suit of the plaintiff was strongly opposed by the defendant No.1 society. According to them Bhiku had no right in the suit property, therefore it could not transfer any rights to the plaintiff. Secondly, the so-called agreement between the plaintiff and Bhiku was not binding upon the defendant No.1. Even though according to the plaintiff, Bhiku was given three garages by builder or society, there was no document in that regard with the plaintiff. The so-called agreement between the plaintiff and Bhiku Exhibit 'A' was not proved by the plaintiff. Then, in that Agreement there is mention of garage No.2 only. Whereas in the plaint the claim of the plaintiff is in respect of garage Nos. 2 and 3. The case of the plaintiff is contradictory to the said Agreement, then it was pointed out that Bhiku had filed a Suit No. 901 of 1995 claiming his rights in the garages. It was dismissed in 1997. Then the appellant had filed a suit vide Suit No. 5360 of 2000 for injunction. That was also dismissed and in all the three suits the claim was in respect of only one garage. According to the society the plaintiff though in possession is a rank trespasser and the property is

situate in Pall Hill area of Bandra and nobody would have given three garages either to Bhiku or to the plaintiff. Lastly, it was contended that even though as per Section 43 BSES is under obligation to give supply to occupier of the premises in this case, they could not be permitted to give supply because both the properties i.e. two garages where the plaintiff alleges right are meant for car parking, they could not be converted into residential blocks, allowing electric supply would be contrary to the provisions of the BMC Act and the permission granted for construction and it would also result in change of user.

4. In this background, the parties went on trial. The trial court dismissed the suit of the plaintiff and hence this appeal.

5. Plaintiff has relied upon 14 documents as referred to by the court in paragraph 10 of the judgment. All these documents merely show that the plaintiff is occupying the suit premises at the most. But the trial court found that Bhiku who placed the plaintiff in possession of the property was not at all in possession of the garage so as to enable Bhiku to hand over possession to the plaintiff. Then plaintiff had filed a suit before the Small Causes Court vide Exhibit 28, and, in

reply thereto the legal heirs of Bhiku categorically denied creation of any tenancy by Bhiku in favour of the plaintiff. This was in Suit No.615 of 2003. The court also found that nowhere in the earlier litigation the plaintiff claim two garages. But it is for the first time in this suit that he was claiming two garages i.e. garage Nos. 2 and 3. In the earlier Suit No. 908 of 1995 filed against the society there was no reference to two garages at all.

6. Then plaintiff had also filed a suit vide Suit No. 5360 of 2000 for the connection of drainage pipeline. It was also in respect of one garage only. His claim was negatived by the City Civil Court and the suit came to be dismissed. Even the ration card relied upon by the plaintiff is of 2000 and not of earlier period. The trial court considered definition of the word "garage" meaning "a place for keeping motor cars, a shop for repairing motor cars" and therefore when the place is specifically ear marked for specified user cannot be legally converted to residential purposes, and therefore, there could not be change of user. Admittedly, plaintiff did not obtain no objection from the society for getting electric connection. Even the society has not accepted Bhiku or plaintiff as its members or Bhiku to be tenant of the society.

The court found that the plaintiff was a simplicitor encoracher and therefore was disentitled to any reliefs.

7. The record of the proceedings and the facts stated above, absence of any evidence regarding execution of the agreement by Bhiku because by the time suit came for trial, Bhiku was dead, the plaintiff did not attempt to get the agreement proved from any one else. Perusal of Exhibit 'A' will show that it is drafted by a person thoroughly acquainted with legal language, and, conveyancing of such document could not have been ordinarily executed after understanding the contents by the plaintiff and Bhiku who was merely a watchman, they could not have used such a language unless they were highly qualified and expert in preparing documents of such nature. There is no evidence to this agreement nor any mention of the scribe. From the copy supplied with this paper book of appeal, the documents is in English. It is typed. No person who typed or prepared this agreement, is examined by the plaintiff.

8. As already stated by me at the most the plaintiff succeed in proving his occupation of one garage only and that is the garage which was referred to by him in the earlier suits. The

addition of garage No.3 in the present suit is nothing but an attempt to grab more and more property of the society.

9. However, counsel for the appellant repeatedly stressed that if under Section 43 the occupier was entitled for electric connection, then whether the plaintiff was an encroacher or trespasser was of no consequence. It is difficult to accept this submission. It is not a question between the Licensing Authority of defendant No.2 the supplier of electricity and the plaintiff but where the suit property is situate in the premises of the society, they are the property of the society. The electric supply is sought for the garages where the plaintiff allegedly resides. The garages cannot be converted into residential premises. Allowing claim of the plaintiff would be giving legal sanction to the change of user, which cannot be done by the Court. Therefore, there is no merit in this Appeal the same is dismissed along with Civil Application, with costs throughout.

28.9.2005 (D.G. DESHPANDE, J.)